

transportation of all goods, wares, commodities, or produce whatsoever, on payment of the tolls imposed by this act." Enders v. Board of Public Works—Britten 365.

By the act of March 20, 1911, the James River and Kanawha Company, which has been chartered as the successor of the James River Company (Acts 1831-2, p. 13), was authorized to buy and execute liens upon the property of the Richmond Dock Company. This act provided that the said company "shall be regarded in law as the successor of the Richmond Dock Company, and shall enjoy all their charter rights and privileges, and shall be subject to all the duties imposed upon them by their charter," have only that the government of the dock company was substituted by that of the James River and Kanawha Company. This purchase was consummated, and the James River and Kanawha Company having been authorized by the act of March 20, 1847, to connect its canal system with tidewater at the foot of the dock, the latter was therewith operated as a part of such canal system, extending from Lynchburg to tidewater at Richmond.

Tracing Its History.
The works, property and franchises of the James River and Kanawha Company were transferred to the Richmond and Alleghany Railroad Company pursuant to an act of the General Assembly approved February 27, 1879. Acts 1878-9, p. 121, whereby the railway company was authorized to abandon nearly all of the canal and to substitute a railroad therefor, a public utility, but the sixth section provides "that the rate of dockage at Richmond shall not exceed the rate at present established by the James River and Kanawha Company, and all existing contracts for water privileges along the entire line shall be respected and maintained at rates not exceeding the present rates, except in those cases in which they may be cancelled or altered by agreement or extinguished by condemnation. It is further provided that the Richmond and Alleghany Railroad Company shall maintain the present water supply of the docks, and of the canal, along its line between Boshers' dam and tidewater, and shall not so destroy or obstruct the present canal between Boshers' dam and tidewater as to lessen the present water supply."

By the act of December 18, 1888, Acts 1888-90, p. 2, the Chesapeake and Ohio Railway Company was authorized to unite with the Richmond and Alleghany Railway Company, the successor of the Richmond Dock Company, and that act provided that "in the event of such purchase or merger the Chesapeake and Ohio Railway Company shall be entitled to, and shall have and possess all the rights, privileges, franchises and property of the Richmond and Alleghany Company, and shall assume 'all of its' lawful debts and obligations." Pursuant to this authority the Richmond and Alleghany Railway Company conveyed all of its property and franchises to the Chesapeake and Ohio Railway Company on January 20, 1890.

What Act Provided.
By the act of February 15, 1901, extra session 1901, page 221, the Chesapeake and Ohio Railway Company was authorized to convey the Richmond dock to the William R. Trigg Company, which had been authorized by the act of 1901 to "execute a lien or liens upon the property so purchased and its profits and franchises, or any part thereof," and that act provided that "the William R. Trigg Company, its successors and assigns, shall be regarded in law as the successor of the Richmond Dock Company, the James River and Kanawha Company, and its successors and assigns, as respects the said Richmond dock, and shall enjoy all the charter rights and privileges incident and appurtenant thereto, and be subject to all the duties imposed upon the said Richmond Dock Company, its successors and assigns, by law." The act also provides that the rate of dockage at Richmond shall not exceed the rates previously provided for, and that the water supply shall not be diminished, and declares it to be the duty of the William R. Trigg Company, its successors and assigns, so to receive the water supply and maintain the water supply of the docks so as in no manner to lessen the water supply, and that the company should become a party to the conveyance for the purpose of expressing its acceptance on behalf of itself, its successors and assigns, of the duties and obligations set forth by it and that to be assumed and performed. Pursuant to that act the property was conveyed to the William R. Trigg Company, and that company became a party to the deed and accepted for itself, its successors and assigns, all the duties and obligations in the said act and in the statutes enacted in pursuance thereof on the Richmond Dock Company, its successors and assigns, by law.

The William R. Trigg Company thus became the owners of the property, and under the express authority of the act of 1901 executed a deed of trust upon the dock property, and becoming involved financially, the property was sold July 12, 1905, for the benefit of its creditors, under decree of the Chancery Court of the city of Richmond, in the chancery suit of S. H. Hawes & Co. and others against the William R. Trigg Company and others, and the sale confirmed to the defendants. The agreed statement of facts shows that the property has been paid for in full and that the defendants are entitled to a conveyance of the same, but that no conveyance has been made to them. Since that time, and until July 6, 1911, the defendants have had possession of the property as purchasers, and have operated the same and collected tolls for the use thereof.

The advertisement of the sale plainly shows that the property was sold to the William R. Trigg Company, and that the company became a party to the deed and accepted for itself, its successors and assigns, all the duties and obligations in the said act and in the statutes enacted in pursuance thereof on the Richmond Dock Company, its successors and assigns, by law.

The advertisement of the sale plainly

BIG MEN SAY "Berry's for Clothes"



Any man can rest in comfort in these special liberally cut suits.

Particular measurements for men who believe in expansion—figuratively.

Fabrics with smooth surface, dark tones with pencil lines are the becoming big styles.

Prices, \$18 to \$33.

The same ample comfort in slip-ons, overcoats and crav-

elled coats.

Special golf suit? Yes.

Big sizes in underwear, col-

lars, shirts and fancy waist-

coats.

One of the advantages of

having a big Metropolitan

Clothing at your door!

Costly Derryle

shows that the property was offered for

sale and bought by the defendants with

express and specific notice that it was

charged with the public uses, with

which it had been charged ever since

it was constructed by the Richmond

Dock Company, and with the public

uses indicated in the statutes and con-

veyances above referred to.

In Public Highway.

A reference to the statute of 1816

shows that the Legislature designates

the property as a canal, and provides

that the canal, basins and water

works to be erected by the Richmond

Dock Company, when completed, shall

forever thereafter be esteemed and

taken as public highways.

So that it plainly appears in every

act of the General Assembly dealing

with the property, and in every

conveyance made of the property, that

it has been charged with a public use,

and upon every transfer of the same

the grantor has imposed such public

duties upon the grantee and made

the performance of such duties a

condition of the transfer. The defend-

ants claim, however, that they are nei-

ther a public service corporation, canal

company or a transportation company.

Let us therefore this commission has

no jurisdiction to entertain these peti-

tions. This may be technically true,

and yet, within the meaning of the Vir-

ginia statutes, they may be charged

with all the duties and responsibilities

of such companies.

Let us inquire whether they are so

charged.

Section 153 of the Constitution, being

the first section of Article 12, dealing

with corporations, provides that as used

in that article the term "corporation"

shall include all trusts,

associations and joint stock companies

having any powers or privileges not

possessed by individuals or unlimited

partnerships; that the term "transporta-

tion company" shall include any com-

pany, trustee or other person owning,

leasing or operating for hire a railroad,

street railway, canal, steamboat, or

steamship line. . . . that the term

"public service corporation" shall in-

clude all persons authorized to exercise

the right of eminent domain or to use

any street, alley or public

highway, whether alone, over or under

the same in any manner not prohibited

to the general public, and that the

term "person" shall include individ-

uals, partnerships and corporations in

the singular as well as in the plural

number. These definitions are repeated

in the act concerning corporations,

Pollard's Code, Section 1291b, and in

the act relating to the organization

and jurisdiction of this commission,

Section 1313a of the Code. Clause 1 of

Section 1294a includes in the definition

of public service corporations "other

internal improvement companies."

Nature of Property.

On behalf of the defendants, it is

earnestly contended that neither the

constitutional provisions nor the

statutes enacted in pursuance there-

of can be made to apply to them as

they allege this property, because, as

they allege, it is not a canal, and

that the property is not a canal, and

that the property is not a canal, and

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pany "shall not so destroy or obstruct the present canal between Boshers' dam and tidewater as to lessen the present water supply." It is that portion of the James River and Kanawha Canal at Richmond which has not been abandoned, and the abandonment of which the Legislature has by implication forbidden, except in the manner provided for in the act of March 16, 1910. This is the act which empowers this commission to authorize the closing of docks under certain conditions. Acts 1910, p. 358.

Jurisdiction Is Clear.
The jurisdiction of the commission, however, does not depend upon whether this property is technically a canal, because the original dock charter provided for a "public highway," and the jurisdiction of the commission is equally clear over persons using or occupying a public highway in a manner not permitted to the general public. Pollard's Code, section 1-4a (1) 1291 (c) (17).

The constitutional provisions and statutes enacted pursuant thereto relating to public service corporations provided new remedies for old rights, and a new tribunal, this commission, in which to assert such rights. Therefore, because remedies in their nature, both the constitutional provisions and the statutes should be construed liberally, so as to make them effective, according to their true intent and purpose.

It is evident that this property is a canal, a public utility, and a work of internal improvement, and a public utility. If owned by a corporation the jurisdiction of the commission could not be questioned. It seems to us equally evident beyond a doubt that the statutes referred to give the commission the same jurisdiction over individuals who claim and own such a public utility as the successor of a corporation, as it would have over the corporation to whose title they succeed, for both in the Constitution and in the statute the language seems to be almost exhausted in the effort to make it plain that the same provisions of law which apply to corporations engaged in the public service apply as well to persons engaged in the public service, or holding property which has been dedicated to the public service. It seems clear to us that to sustain such a narrow construction as is contended for by the defendants is to "stick in the bark" and to defeat the manifest purpose and intent of the law. We conclude, therefore, that these defendants, as persons owning this dock property, are under the jurisdiction of this commission, because they are subject to the laws of this State governing transportation companies, canal companies, and works of internal improvement, and works of public service, as well as because they are persons owning and occupying a public highway in a manner not permitted to the general public.

Required by Law.
The act of February 27, 1879, authorizing the Richmond and Alleghany Railroad Company to buy the James River and Kanawha Canal property, by providing for an undiminished supply of water in the canal from Boshers' dam to tidewater, and by prohibiting any increase in the rate of dockage, by plain irresistible implication, we think required the dock to be kept open, but when it was subsequently proposed to convey the property to the Trigg Company this plain and irresistible implication was, by the General Assembly, enlarged into an express declaration in the act of February 15, 1901, whereby, in addition to the duties imposed in the act of February 27, 1879, it was provided that the Trigg Company should be regarded in law as the successor of the Richmond Dock Company and the James River and Kanawha Company, and that the successors and assigns of the Trigg Company, as respects the Richmond dock, should be subject to all of the duties imposed upon the said Richmond Dock Company. Still further to emphasize this legislative purpose it was provided that the William R. Trigg Company should be regarded in law as the successor of the Richmond Dock Company for the purpose of expressing its acceptance on behalf of itself, its successors and assigns, of the duties and obligations referred to and then to be assumed and performed. So that by this transaction these duties and obligations, in the form of an express contract which in our judgment, was intended to bind, and does bind the defendants, the successors in title of the Trigg Company. So that when the Trigg Company undertook to convey the property it could only convey it to all to whom it possessed subject to all of the duties imposed by that contract. The public use of the dock, therefore, to the property, in our judgment, follows it, and the Chancery Court of Richmond could only sell and did only sell the property subject to such public uses. In our opinion this use so attached to the property itself under the various acts referred to, and under the contract of the Trigg Company, that it can only be discharged therefrom by authority of the General Assembly of Virginia.

Duty to Repair It.
We have neither reviewed nor referred to the cases, and by counsel, because we think that all the issues fairly arising under the pleadings in this proceeding are definitely settled by the Constitution and statutes of this State relating to public service corporations. The cases are instructive and not in conflict with the written law of the State. If such conflict exists the Constitution and statutes are controlling.

The evidence shows that the defendants are negligent in the performance of their duty to the public, imposed upon them as owners of the property by the statute and contract referred to, in failing to repair the dock, having permitted the gate of the Eastern lock to become so weak as to make its use so dangerous that the dock has been closed. It is their manifest duty to repair this gate so as to restore the canal or dock to public use, and the commission will enter an order directing them to discharge that duty.

Commissioners Rhea and Wingfield concur.

TAFT WILL BREAK TRAVEL RECORDS

(Continued From First Page)

In his private car attached to regular trains.

Stands Wear and Tear Well.

Mr. Taft has stood the wear and tear of his travel thus far better than any of the members of his party, and does not view the additional trip with any physical misgivings.

Major Archibald W. Butt, his indefatigable military aid, who has been at the President's side during all of his travels, and who kept close step with President Roosevelt as well, has been on the sick list now for several days.

DEATHS

MARTIN—Died, in Baltimore, Md., October 18, 1911, P. C. MARTIN, of 5225 Williamsburg Avenue, Richmond, Va. Funeral notice later.

DOHERTY—Died, at her residence, 3017 East Clay Street, at 3:20 P. M. Wednesday, October 18, 1911, CARRIE L. DOHERTY, in the twenty-fourth year of her age. Funeral notice later.

GIBBS—Died, at her home, No. 827 Bainbridge Street, South Richmond, October 18, 1911, at 2:30 A. M., MRS. J. GIBBS, wife of E. Scott Gibbs and daughter of the late James M. Gibbs. She leaves to mourn their loss husband, one son, two brothers and two sisters.

Funeral from Central M. E. Church, THIS THURSDAY, October 19, at 3 P. M. Interment in Maury Cemetery.

ISBELL—Died, at her home, Oak Hill, Louisiana county, October 18, 1911, MRS. IDA M. ISBELL, wife of Norris C. Isbell, aged fifty years.

A loving wife, devoted mother, faithful Christian gone to her reward.

Music Teachers of Richmond

And nearby territory are advised that our full stock of Teaching Music is in, and we are ready to supply any demand.

Our stock consists of the best editions of teaching material—Schirmer, Peters, Ditson, Wood and Church editions—from which to make your selection.

Instruction Books for Piano.
Instruction Books for All Musical Instruments—Guitar, Mandolin, Violin, Cornet, Clarinet and others.

We wish to call special attention to our stock of Violin Studies and Folios.

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All Popular Music at TEN CENTS per copy. All the latest Operatic Music can be found here. Selections from "The Siren," "Pink Lady," "Spring Maid," "Girl of My Dreams," "Naughty Marietta," and others.

POPULAR SONGS.
"Red Rose Rag," "Mysterious Rag," "Alexander's Ragtime Band," "In All My Dreams I Dream of You." Folios to suit every one. Music for any grade and by the best composers, standard and modern.

Sacred Music and Operatic Folios for your inspection. Home Songs, Irish Songs, German Songs, Patriotic Songs, Child Songs and Folk Songs always on hand.

Sheet Music for All Grades.

The Corley Co.
SUCCESSORS CABLE-PIANO CO.

213 East Broad.

but is rapidly recovering and will go through to the finish.

The President has been promising for two years to visit certain cities in Tennessee, and is anxious to keep his word. He was due to visit Hodgenville, Ky., early in the fall, but was obliged to remain out of the State while a bitter political campaign was on.

With the present trip ended and with Congress, the national conventions and presidential campaign coming on within the next few months, Mr. Taft's travels will be over for some time to come. He decided to clear up all of his tentative engagements at one time if he could, and face the coming session and campaign with a clean slate.

TURTLE'S STATUS DECIDED

Within Law It Is an Animal Without Law, a Reptile.

New York, October 18.—In holding Captain H. Downs of the U. S. Line steamer Saratoga, in \$500 bail for the Court of Special Sessions on a charge of cruelty to animals preferred by the American Society for the Prevention of Cruelty to Animals, Magistrate Freschi handed down a decision determining for the first time in history, it is believed, the legal status of the turtle.

Captain Downs was charged with permitting the fins or flippers of sixty-six large sea turtles, which he carried as freight on the Saratoga, to be pierced and tied to prevent the turtles from crawling the sides of the ship.

In an opinion of several thousand words Magistrate Freschi decided the contention whether or not the turtle was an animal, and the law it is a reptile, he decided.

The last prosecution in a case in which a turtle was charged with cruelty, was as far back as 1876, when the same society instituted proceedings, but at that time the case after much argument, was left undecided.

MORGAN STATUE UNVEILED

Veterans From Over West and South Are in Attendance.

Lexington, Ky., October 18.—This city was the Mecca to-day of Confederate veterans, their sons and daughters from all over the West and South.

The occasion for the gathering was the unveiling of a statue to General John H. Morgan, the Confederate leader.

Governor A. E. Wilson made the address of welcome to visiting veterans and daughters on behalf of the State of Kentucky. Dr. Guy Charleston Lee, of Danmore, delivered the unveiling address.

OBITUARY

William Morrissey.

[Special to The Times-Dispatch.]

Goldsboro, N. C., October 18.—News was received here this afternoon of the death this morning of William Morrissey at St. Agnes' Hospital, in Baltimore, Md., of cancer of the rectum.

Mrs. Sarah E. Gill.

[Special to The Times-Dispatch.]

Beach, Va., October 18.—Mrs. Sarah E. Gill died at her home near here this afternoon of Bright's disease. Mrs. Gill was in the sixty-second year of her age. She was survived by her husband, Wm. C. Gill, sheriff of Chesterfield county, two brothers and three sisters, and seven daughters, Mrs. T. H. Martin, Mrs. Thomas R. Bailey and Misses Roberta and Nellie Gill, all of this place, and Mrs. Dr. H. B. Lusk, of Winterport. Mrs. James Williams, of South Richmond, and Mrs. W. E. S. Coker, of Chester, and one son, Thomas E. Gill, of this place. The funeral will take place to-morrow afternoon at 3:30 o'clock from St. Paul's Episcopal Church. She had been ill for several weeks, and was taken suddenly worse on Sunday.

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A loving wife, devoted mother, faithful Christian gone to her reward.

GOD CAN'T DESTROY ESSENCE OF SOUL

Man May Be Damned, but He Cannot Lose His Being.

CHALONER'S PHILOSOPHY

He Further Discourses on Scriptures as He Has Interpreted Them.

[Special to The Times-Dispatch.]
Charlottesville, Va., October 18.—John Armstrong Chaloner, devoted two hours of today's hearing to a further discussion of his religious convictions and of the philosophy of life, he evolved from his four years' critical study of the Scriptures while confined in Bloomingdale, which views he will bring out in a book entitled "The Impotence of Omnipotence" or "Brief Studies of the Scriptures."

There are no material discrepancies in the Scriptures, said Chaloner, "and what few there are, are not strong enough to shake the faith of an intelligent mind. Sin is of an ex-certain kind, allied to poison of a certain kind, which requires fire to purify it—hence purgatory and hell."

What Hell Is.

"Hell is a scientific receptacle for immortal, non-perishable essences of a deadly nature. As all men are immortal, they go there put through chemical process by which the moral hydrophobia or sin contracted in this world is cauterized out of them by fire and other febrifuges. If these spirits don't want to live, if they are fundamentally lazy and would rather die than work to purify their souls, then a generous God says 'die.' Damnations is a scientific process, the elimination of all mental qualities from the life essence. God cannot destroy the essence of a mortal soul. A man can lose his soul if he elects after death to be damned, but he cannot lose his being. His essence is immortal. All mental qualities are stripped from the life essence of a soul if it elects after death to be annihilated. The essence of all life is heat, fire, flame, and the life essence of a person, after death, is stripped of all mental qualities, and the life essence of a person is thrown into the receptacle for evil spirits—a lake of fire. Thus fire meets fire. Fire lives with fire forever and without pain, and the porter of the lake of fire is forever removed, for fire cannot hurt fire."